

REMARKS

Pursuant to 35 U.S.C. § 121, the Examiner entered a restriction requirement for the following groups of inventions:

- Group I: Claims 39-75, drawn to a medical device, classified in Class 606, subclass 200.
- Group II: Claims 76-81, drawn to a method of disposition of an elongate element at a target location in anatomy, classified in Class 606, subclass 200.
- Group III: Claims 82-89, drawn to a system at least for determining when detachment of a detachable distal end of a medical device, classified in Class 606, subclass 200.

Without admitting whether the Groups of claims identified by the Examiner are patentably distinct, Applicants respectfully traverse this restriction as explained below, but, pursuant to 37 C.F.R. § 1.143, provisionally elect the invention of Group I, claims 39-75.

First, Applicants respectfully point out that the Examiner has indicated that all three Groups of claims are in the same class 606, and the same subclass 200. In addition, all three Groups involve using vibration to detach the distal end of a medical device or wire. Thus, Applicants respectfully submit that searching for all three Groups would not require excessive searching by the Examiner.

Second, the Examiner contends that the inventions of Groups I and II are related as product and process of use, but are distinct. In particular, the Examiner contends that the product of Group I can be used in a materially different process. The Examiner also contends that the inventions of Groups II and III are related as product and process of use, but are also distinct. In particular, the Examiner contends that the product of Group III can also be used in a materially different process.

Without evaluating whether the Examiner's position is correct, Applicants respectfully submit that M.P.E.P. § 806.05(h) states that the burden is on the Examiner to provide an example wherein (A) the process can be practiced with a materially different product, or (B) the product can be used in a materially different process. Applicants submit that the Examiner has provided no such example for either of these restrictions. In view of the foregoing, Applicants respectfully submit that the Examiner's restriction requirement as to Groups I and II, and as to Groups II and III, are improper. Reconsideration of these

restrictions pursuant to 37 C.F.R. § 1.143 is earnestly solicited, and an indication from the Examiner that Group II claims 76-81 will be considered for prosecution is requested.

Third, without admitting that the restriction with respect to Group III was proper, Applicants have amended claims 82-89 so that they are now dependent (directly or indirectly) on claim 39. Support for the amendments is found in the originally filed specification and drawings. Applicants submit that the Examiner's restriction requirement as to Groups I and III, is now moot. Reconsideration of this restriction pursuant to 37 C.F.R. § 1.143 is earnestly solicited, and an indication from the Examiner that amended claims 82-89 will be considered for prosecution is requested.


Applicants reserve the right to pursue Group III claims 82-89 in a divisional application without the above amendments, or in this application if allowable. In addition, if the Examiner determines that the restriction with respect to Group II claims 76-81 is proper, then Applicants reserve the right to add additional claims to this application that are dependent (directly or indirectly) on Group I claim 39 and that contain some or all of the limitations of the claims 76-81 of Group II.

Should the Examiner wish to discuss any of the foregoing in greater detail, then the Examiner is invited to telephone the undersigned at the Examiner's convenience.

Respectfully submitted,

Respectfully submitted,

Date: 2-13-04

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